SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 24 2014
ARTHUR JOHNSTON
BY ________ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
~~GULFPORT~~ DIVISION
Southern

WANDA L. MARSHALL and
JESSE J. MARSHALL,
Individually and as Husband and Wife **PLAINTIFFS**

V. **CASE NO.** 1:14cv65KS-MTP

RIVERBOAT CORPORATION OF MISSISSIPPI D/B/A/ AS
ISLE OF CAPRI CASINOS - BILOXI,
ISLE OF CAPRI CASINOS, INC. and
SOUTHEAST COMMERCIAL CLEANING, LLC **DEFENDANT**

COMPLAINT
JURY TRIAL DEMANDED

COME NOW, the Plaintiffs, Wanda L. Marshall and Jesse J. Marshall, individually and as Husband and Wife, by and through counsel, and for cause of action against the Defendants, Riverboat Corporation of Mississippi d/b/a Isle of Capri Casinos - Biloxi; Isle of Capri Casinos, Inc. and Southeast Commercial Cleaning, Inc., allege and say:

PARTIES

1. Plaintiffs are residents and citizens of Terre Haute, Vigo County in the State of Indiana.

2. Defendant, Riverboat Corporation of Mississippi d/b/a Isle of Capri Casino - Biloxi (ICC) is a Mississippi corporation, with its corporate principal address and place of business in Texas which is registered to do business in Mississippi and doing business in the state of Mississippi, and may be served with process of this Court through its registered agent for service of process, National Registered Agents, Inc., 840 Trustmark Building 248 E. Capitol Street, Jackson, Mississippi. Plaintiffs respectfully request that summons be issued and returned to Plaintiffs' counsel for service by private process upon this Defendant.

3. Defendant Isle of Capri Casinos, Inc., (IOC) is a Delaware corporation, with its principal place of business in Missouri which is registered to do business in Mississippi and doing business in the state of Mississippi, which may be served with process of this Court through its registered agent for service of process, CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi. Plaintiffs respectfully request that summons be issued and returned to Plaintiffs' counsel for service by private process upon this Defendant.

4. Defendant, Southeast Commercial Cleaning, LLC (SEC) is a Florida limited liability company, with its principal place of business in Florida that is registered to do business in the state of Mississippi and doing business in the state of Mississippi. All officers and directors of SEC are residents of Florida. SEC may served with process of this Court through its registered agent for service of process, Corporation Service Company, 506 S. President Street, Jackson, Mississippi. Plaintiffs respectfully request that summons be issued and returned to Plaintiffs' counsel for service by private process upon this Defendant.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §1332, as all the parties to this suit are diverse and the amount of controversy exceeds the sum and value of $75,000, exclusive of interests and costs.

6. Because the events and omissions giving rise to Plaintiffs' claims occurred in the City of Biloxi, Harrison County, Mississippi, and because the property that is the subject of this action lies in the City of Biloxi, Harrison County, Mississippi, venue is proper in the United States District Court for the Southern District of Mississippi, Gulfport Division pursuant to 28 U.S.C. §1391(2).

FACTS

7. At all relevant times herein, on or about October 31, 2012, the Plaintiffs were business invitees and hotel guest customers of Defendants ICC and IOC located in Biloxi, Mississippi. Plaintiffs were assigned Room 327 by the IOC Defendants' representatives and agents.

8. At all relevant times, the ICC and/or IOC Defendants offered and held itself out as a safe facility that owns, operates and offers to the general public lodging and dining facilities and other recreational amenities. The ICC and/or IOC Defendants cater to and invite large tour groups to use its facilities, including senior citizen groups–such as the Plaintiffs here, and provide incentives and discounts to encourage groups to patronize the provided facilities.

9. At all relevant times, the ICC and/or IOC Defendants, as owners and operators of the premises, had a non-delagable duty to provide safe, clean facilities and premises to its invited guest and/or to warn the invited guest of deficiencies and hazardous conditions, including their guest rooms. The ICC and/or IOC Defendants were the ultimate authority in deciding whether a guest room was ready to be placed in service for its invited guests.

10. At all relevant times, SEC was the commercial cleaning service hired by ICC and/or IOC. SEC was charged to clean and service all hotel guest rooms, correct and/or report any deficiencies and notify ICC and/or IOC if and when a guest room was able to be placed back in service.

11. At all relevant times herein, Defendants SEC and ICC and/or IOC had a contractual agreement wherein SEC was to perform cleaning and labor services at the Isle of Capri, which included cleaning the hotel rooms and reporting deficiencies observed in all guest rooms to ICC and/or IOC housekeeping department for corrective action and/or ensure the deficiencies were corrected before the next guest arrived.

12. On October 28, 2012, Plaintiffs set out on a six (6) day bus tour with destinations for Tunica Mississippi, Biloxi, Mississippi and New Orleans, Louisiana. Plaintiffs' itinerary was pre-determined and reservations had been completed prior to Plaintiffs' departure from their home in Indiana so that ICC and IOC knew of Plaintiffs arrival date and their group affiliation.

13. In the morning hours of October 31, 2012, Plaintiff, Wanda Marshall, awoke to prepare for her day to include taking a bath in the Isle of Capri hotel guest room bathtub assigned to the Marshalls. As she completed her bath, Wanda Marshall attempted to exit the bathtub. Because there were no anti-slip strips on the tub or a non-slip bathtub mat, as is standard in the Isle of Capri guest rooms, Wanda Marshall slipped and fell violently in the tub sustaining serious, debilitating and permanent injuries including breaking her right leg in multiple places and injuring her right hip and knee.

14. Jesse Marshall, Plaintiff's husband, was in the bathroom's vanity area and heard Plaintiff fall. Jesse Marshall had to drag his seriously injured wife from the tub and bathroom into the bedroom area and seek help. After several efforts to seek medical assistance and help from hotel's front desk using the guest room's telephone to no avail, Jesse Marshall was forced to leave his seriously injured and distressed wife alone and physically go to seek help from hotel personnel.

15. SEC and ICC and/or IOC knew Plaintiffs' assigned room did not have anti-slip strips on the base of the tub or a non-slip bathtub mat in place in room 327; yet, in complete disregard for Plaintiffs' safety, SEC cleared room 327 for use and placed it back in service. ICC and/or IOC knew or should have known room 327 was deficient and without the bathroom safety mat, and in complete disregard for Plaintiffs' safety, rented and assigned the same to Plaintiffs, knowing of the hazardous and dangerous condition.

16. Based upon information and belief, prior to the incident that gives rise to Plaintiffs' claims here, ICC and/or IOC and SEC knew Plaintiffs' assigned room did not have the safety non-slip bathtub mat (as other hotel guest bathrooms had) as the deficiency had been reported; however, neither ICC and/or IOC nor SEC did anything to remedy the hazardous condition and failed to warn Plaintiffs of this known hazard.

17. Plaintiffs allege that ICC and/or IOC knew that Plaintiffs' assigned room did not have the anti-slip strips on the base of the tub or a non-slip adhesive bathtub mat in place in room 327, as was standard in other hotel guest rooms; yet in complete disregard for Plaintiffs' safety and welfare, ICC and/or IOC failed to correct the deficiency of which it had clear notice, and rented/sold the room to Plaintiffs without any warning of the deficiency.

18. As a direct and sole proximate cause of the injuries sustained by Wanda Marshall, Wanda Marshall was seriously injured and had to be transported to the hospital by ambulance where she underwent treatment for her injuries, including an open reduction of her right femur with internal fixation.

COUNT I
NEGLIGENCE

19. Plaintiffs allege that Defendant, ICC and/or IOC was under a non-delegable duty to maintain the aforementioned premises in a reasonably safe condition, which they failed to do. Further, Defendant ICC and/or IOC had a non-delegable duty to inspect the premises and to prevent such a dangerous condition from being created or to remain, and owed a duty to Plaintiffs to correct and/or warn them of any such dangerous condition, which they failed to do.

20. Plaintiffs allege that ICC and /or IOC negligently failed to train and/or supervise SEC in

reporting deficiencies, correcting deficiencies and/or restricting guest rooms from further use until guest room deficiencies and hazardous conditions were corrected.

21. Plaintiffs allege that Defendant, SEC negligently failed to correct the deficiency of the missing bathtub mat and cleared the room to be sold to the Plaintiffs, and in doing so, failed to correct a hazardous condition and affirmatively created and/or allowed a dangerous condition to exist.

22. Based on information and belief, ICC and/or IOC failed to heed the deficiency notice concerning room 327 issued by SEC, and in reckless disregard for the Plaintiffs' safety, knowingly sold room 327 to the Plaintiffs with the hazardous condition present.

23. Both IOC and/or ICC and SEC were negligent in performing their duties and were guilty of the following common law negligence, which were a direct and proximate cause of the Plaintiffs' injuries and resulting damages:

a. Failure to maintain the premises under their care;
b. Failure to inspect the premises under their care for dangerous conditions;
c. Failure to properly warn Plaintiffs of dangerous conditions existing upon the premises;
d. Failure to remedy and/or correct the dangerous condition of the premises under their exclusive care;
e. Failure to train, supervise and monitor their employees, contractors and/or servants;
f. Failure to report the subject hazardous condition and/or correct the hazardous condition which it had notice of; and,
g. Failure to advise supervisory authorities of the hazardous condition, and failure to advise authorities who had the responsibility of the subject premises to correct the deficiency.

24. Plaintiffs allege that Defendants were acting in concert with one another so as to form common acts of negligence for which each should be held liable to the degree of fault allocated to each by a jury, or that one Defendant was acting behalf of the other Defendant so as to impute negligence to said principle, or that one Defendant was acting in the course and scope of their employment at the time the hazardous condition was created, discovered, reported and/or not

corrected, thus, is making the employing Defendants vicariously liable for the negligent actions alleged herein.

25. Plaintiffs allege that as a direct and proximate result of the actions of Defendants, they were caused to suffer injuries and damages as hereinafter set forth.

COUNT II
PREMISES LIABILITY

26. Plaintiffs incorporate by reference herein, each of the prior paragraphs numbered 1-25, as if fully rewritten herein.

27. As business invitees, Defendants ICC and/or IOC owed Plaintiffs the duty to keep its premises in a reasonably safe condition and to warn of dangerous conditions which are not readily apparent to the invitee.

28. Defendants ICC and/or IOC further owed Plaintiffs a duty not to create a dangerous condition and/or allow a known dangerous condition to continue to exist once they were notified of the condition.

29. ICC and/or IOC breached their duty to the Plaintiffs by:

a. Failing to provide Plaintiffs with a reasonably safe guest room;
b. Allowing a dangerous and hazardous condition to remain and exist for such an appreciable amount if time as to impute constructive knowledge upon ICC and/or IOC of the condition;
c. Failing to remedy the dangerous condition they had actual notice of;
d. Failing to warn Plaintiffs of the dangerous condition it had actual notice of; and,
e. Renting to the Plaintiffs a room that was unsuitable and not in conformity with other ICC and/or IOC rooms.

COUNT III
GROSS NEGLIGENCE

30. Plaintiffs incorporate by reference herein, each of the prior paragraphs numbered 1-29, as if fully rewritten herein.

31. Based upon information and belief, IOC and/or ICC and SEC knew of the hazardous condition complained of here, observed the hazardous condition complained of here, reported and/or received a report of the hazardous condition existed and failed in every regard to correct, remedy, or warn Plaintiffs of the hazardous condition, evidencing a careless disregard for the Plaintiffs.

32. Plaintiffs would further show that ICC and/or IOC and SEC acknowledged by their respective affirmative acts the necessity of having anti-slip strips on the base of the tub or a non-slip bathtub mat available for all guest rooms as the other hotel rooms were equipped with the anti-slip bathtub mats or had the anti-slip strips on the tub. Plaintiffs allege that ICC and/or IOC had notice of the deficiency and controlled the issuance of what room the Plaintiffs could rent and acted with gross negligence in failing to correct the deficiency before renting the room to Plaintiffs.

33. Plaintiffs would show that the active and affirmative acts, omissions and commissions on the parts of ICC and/or IOC and SEC were willful and wanton and/or of such gross negligence as to entitle Plaintiffs to the imposition of punitive damages.

DAMAGES

34. Plaintiffs incorporate by reference herein, each of the prior paragraphs numbered 1-33, as if fully rewritten herein.

35. Plaintiffs respectfully allege that as a direct and proximate cause of the aforementioned acts of negligence and gross negligence on the part of the Defendants herein, Plaintiff, Wanda Marshall,

suffered and continues to suffer and incurred and continues to incur the following injuries and damages:

a. Medical expenses, both past, present and future;

b. Severe and permanent injuries precipitated and aggravated by the wrongs complained of herein, including but not limited to injuries to her right leg and knee;

c. Physical pain and suffering, past, present and future;

d. Mental and emotional anguish, past, present and future;

e. Loss of the enjoyment of life as a result of injuries sustained;

f. Loss of pleasure and interruption of their vacation;

g. Financial loss and trauma of having to be transferred through states for medical care and making alternative arrangements to return to Indiana; and,

h. Other damages to be proven at trial.

36. Plaintiff, Jesse Marshall, alleges that as a direct and proximate result of the aforementioned negligent acts of Defendants named herein and the resulting injuries to his wife, he sustained the loss of love, affection, companionship, support, services and society and sues for his loss of consortium, past, present and future.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Wanda L. Marshall and Jesse J. Marshall, individually and as husband and wife, respectfully make a claim against the Defendants, Riverboat Corporation of Mississippi d/b/a Isle of Capri Casinos - Biloxi, Isle of Capris Casinos, Inc., and Southeast Commercial Cleaning, Inc., for a fair and reasonable amount of damages to be determined by a jury, in excess of this Court's jurisdiction minimum. Furthermore, Plaintiffs, Wanda L. Marshall and Jesse J. Marshall, individually and as husband and wife, respectfully pray for a jury to hear this matter and decide all damages as they may appear on the trial of this cause, including punitive damages, reserving all rights to amend this pleading to conform to the facts as they may develop, for costs and for all other general relief justified by the facts under law or equity.

This, the 20th day of February, 2014.

Respectfully Submitted,

WANDA MARSHALL AND JESSE J. MARSHALL,
Individually and as Husband and Wife,

Donna M. Meehan

DONNA M. MEEHAN (MSB NO. 100484)

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